

Date: February 13, 2020  
CT-2020-002

Andrée Bernier for / pour  
REGISTRAR / REGISTRARE

OTTAWA, ONT.

# 2

CT - 2020 - 2

## THE COMPETITION TRIBUNAL

**IN THE MATTER** of the *Competition Act*, R.S.C. 1985, c. C-34;

**AND IN THE MATTER** of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondents under paragraph 74.01(1)(a) and section 74.011 of the *Competition Act*.

**BETWEEN:**

**THE COMMISSIONER OF COMPETITION**

**Applicant**

- and -

**STUBHUB INC., STUBHUB CANADA LTD.**

**Respondents**

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### CONSENT AGREEMENT

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**WHEREAS** the Commissioner is responsible for the administration and enforcement of the Act;

**AND WHEREAS** the Respondents operate online platforms that connect buyers and sellers of Tickets to sports and entertainment events and on which the Respondents make Representations about the price at which consumers can purchase Tickets;

**AND WHEREAS** the Respondents make Representations to the public in Canada on their Websites, Mobile Application and by Email;

**AND WHEREAS** the Respondents control the domain names and associated Websites by which persons in Canada accessed the Representations;

**AND WHEREAS** the Respondents make the Representations to the public to promote the sale of Tickets and their business interests more generally;

**AND WHEREAS** the Commissioner has concluded that the Respondents advertise prices for Tickets that are not in fact attainable, because the Respondents charge consumers Non-Optional Fees in addition to the prices initially advertised;

**AND WHEREAS** the Commissioner has concluded that certain of the Respondents' Representations create the general impression that consumers can purchase Tickets for less than what the Respondents actually charge, because the initial price shown on the Event Page does not include the Non-Optional Fees added on the Check-Out Page;

**AND WHEREAS** the Commissioner has concluded that the prices shown on the Check-Out Page are often 28% higher than the prices shown on the Event Page due to Non-Optional Fees;

**AND WHEREAS** the Commissioner has concluded that disclosure of the amount of the Non-Optional Fees at later stages of the purchasing process, including on the Check-Out Page, is inadequate to prevent the Representations from being false or misleading in a material respect;

**AND WHEREAS** the Respondents have given consumers an option to use a "show prices with estimated fees" toggle on the Event Page since 2015, however, the Commissioner has concluded that, even with this toggle turned "on", in certain cases consumers are required to pay more than the price represented as inclusive of estimated fees;

**AND WHEREAS** the Commissioner has concluded that the Respondents make Representations to the public that are false or misleading in a material respect, even though consumers are shown the total price including Non-Optional Fees on the Check-Out Page;

**AND WHEREAS** the Commissioner has concluded that the Respondents engaged in conduct reviewable pursuant to paragraph 74.01(1)(a) and section 74.011 of the Act;

**AND WHEREAS IT IS AGREED AND UNDERSTOOD** that for the purposes of this Agreement only, including execution, registration, enforcement, variation or rescission of this Agreement, and subject to paragraph 19 of this Agreement, the Respondents do not contest the Commissioner's conclusions but nothing in this Agreement shall be taken as an admission or acceptance by the Respondents of any facts, wrongdoing, submissions, legal argument or conclusions for any other purpose nor shall it derogate from any rights or defences of the Respondents against third parties including any defences available under the Act;

**AND WHEREAS** the Respondents have advised the Commissioner that they will voluntarily make changes to their Websites, Mobile Application and Email to ensure that consumers are shown a price inclusive of Non-Optional Fees the first time they are shown a price;

**AND WHEREAS** the Commissioner acknowledges the Respondents' voluntary cooperation in resolving this matter and implementing the terms of the Agreement;

**AND WHEREAS** the Commissioner has agreed to more favourable terms in this Agreement than would otherwise be the case because of the Respondents' cooperation with the Commissioner's investigation;

**AND WHEREAS** the Parties are satisfied that this matter can be resolved with the registration of this Agreement which, upon registration, shall have the same force and effect as an order of the Tribunal;

**NOW THEREFORE**, in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

## **I. INTERPRETATION**

1. For the purpose of the Agreement, the following definitions shall apply:
  - a. "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34;
  - b. "**Affiliate**" means an affiliated corporation, partnership or sole proprietorship within the meaning of subsection 2(2) of the Act;
  - c. "**Agreement**" means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act, including Appendix "A" hereto;
  - d. "**Check-Out Page**" means the final page that a consumer sees before completing payment;
  - e. "**Commissioner**" means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
  - f. "**Email**" means any electronic message sent by or on behalf of the Respondents to persons in Canada relating to Tickets available from the Respondents' Websites or Mobile Application;
  - g. "**Event Page**" means the first page on which a consumer sees a Headline Price for an event;
  - h. "**Execution Date**" means the date on which the Agreement has been signed by both Parties;
  - i. "**Headline Price**" means the price for a Ticket, exclusive of Non-Optional Fees;
  - j. "**Interpretation Act**", means the *Interpretation Act*, R.S.C. 1985, c. I-21;
  - k. "**Marketing Personnel**" means all current and future employees of the Respondents and Senior Management of the Respondents who are materially involved in or responsible for developing, implementing or overseeing the advertising or marketing for Tickets;

- l. “**Mobile Application**” means any mobile application owned, controlled or operated by the Respondents as a platform to connect buyers in Canada and sellers of Tickets;
- k. “**Non-Optional Fees**” means any charges, surcharges, fees, or other amounts that are charged in addition to Headline Prices and that consumers are required to pay to purchase Tickets, excluding government taxes. Non-Optional fees include, but are not limited to, fees identified by the Respondents as “service fees”, “transactional fees”, “fulfillment fees”, “delivery fees”, “additional fees”, and “fees”;
- l. “**Parties**” means the Commissioner and the Respondents collectively, and “**Party**” means any one of them;
- m. “**Person**” means any individual, corporation, partnership, firm, association, trust, unincorporated organization, or other entity;
- n. “**Representations**” means any and all representations made, caused to be made, or permitted to be made by or on behalf of the Respondents on the Websites, the Mobile Application and by Email;
- o. “**Respondents**” means StubHub, Inc. and StubHub Canada Ltd.;
- p. “**Senior Management**” means the Respondents’ current and future Chief Executive Officer, Chief Operating Officer, Chief Administrative Officer, Chief Financial Officer, Chief Accounting Officer, President, Vice Presidents, Secretary, Controller, General Manager, Managing Directors, and any individual who performs their functions;
- q. “**StubHub Inc.**” means StubHub Inc., a corporation incorporated pursuant to the laws of the State of Delaware, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by it within the meaning of subsection 2(4) of the Act, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- r. “**StubHub Canada Ltd.**” means StubHub Canada Ltd., a corporation incorporated pursuant to the laws of the Province of Ontario, its directors, officers, employees, agents, representatives, successors and assigns, and all joint ventures, subsidiaries, divisions and Affiliates controlled by it within the meaning of subsection 2(4) of the Act, and the respective directors, officers, employees, agents, representatives, successors and assigns of each;
- s. “**Tickets**” means tickets to live sports or entertainment events in Canada;
- t. “**Tribunal**” means the Competition Tribunal established by subsection 3(1) of *Competition Tribunal Act*, R.S.C., 1985, c. 19 (2nd Supp.); and

- u. “**Websites**” means each website accessible from [stubhub.ca](http://stubhub.ca) and any other website with a .ca top level domain owned, controlled or operated by the Respondents and used for the purposes of operating a platform to connect buyers and sellers of Tickets. For greater certainty, Websites shall include websites accessed via desktop computers and via mobile devices such as phones and tablets.

## **II. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE ACT**

2. Within 30 days of the Execution Date, the Respondents shall comply with Part VII.1 of the Act.
3. Without limiting the generality of the foregoing, within 30 days of the Execution Date, the Respondents shall not make, cause to be made, or permit to be made on their behalf any Representation to the public in Canada that creates the materially false or misleading general impression that consumers can buy Tickets at prices that are not in fact attainable because of the existence of Non-Optional Fees. In furtherance of the above, the Respondents shall intercept users identifiable as Canadians and require them at the outset to make an express choice as to whether they wish to be redirected to the Websites when searching for Tickets on stubhub.com.
4. If any of the Respondents becomes aware that there has been a breach or possible breach of any terms of this Agreement, the Respondents shall, within ten (10) days after becoming aware of the breach or possible breach, notify the Commissioner thereof, and shall provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach, and the steps the Respondents have taken to correct the breach or possible breach.

## **III. PAYMENT**

### **ADMINISTRATIVE MONETARY PENALTY**

5. The Respondents shall pay an administrative monetary penalty in the amount of \$1,300,000.

### **FORM AND TIME OF PAYMENT**

6. The payment referred to in paragraph 5 above shall be made within 5 days after the Execution Date by certified cheque or by wire transfer payable to the Receiver General for Canada.

## **IV. CORPORATE COMPLIANCE PROGRAM**

7. Within 90 days after the Execution Date, the Respondents shall establish, and thereafter maintain, a corporate compliance program, the goal of which will be to promote the compliance of the Respondents with the Act generally, and Part VII.1

of the Act specifically. The compliance program shall be framed and implemented in a manner consistent with the Commissioner's bulletin titled "Corporate Compliance Programs", as published (as of the Execution Date of this Agreement) on the Competition Bureau's website at [www.competitionbureau.gc.ca](http://www.competitionbureau.gc.ca).

8. The Respondents' Senior Management shall fully support and enforce the compliance program and shall take an active and visible role in its establishment and maintenance.
9. Within 21 days after the establishment of the compliance program, each current member of Senior Management with responsibility for advertising or marketing Tickets shall acknowledge his or her commitment to the compliance program by signing and delivering to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement. Any individual that becomes a member of Senior Management with responsibility for advertising or marketing Tickets during the term of this Agreement shall sign and deliver to the Commissioner a commitment letter in the form set out in Appendix "A" of this Agreement, within 21 days of becoming a member of Senior Management.

#### **V. COMPLIANCE REPORTING AND MONITORING**

10. During the term of this Agreement, (i) the Respondents shall provide a copy of this Agreement to all Marketing Personnel within 14 days after the date of registration of this Agreement, and (ii) all future Marketing Personnel will be provided with a copy of this Agreement within 14 days after his or her commencement of employment. Within 14 days after being provided with a copy of this Agreement, the Respondents shall secure from each such person a signed and dated statement acknowledging that he or she read and understood this Agreement and Part VII.1 of the Act.
11. The Respondents shall provide the Commissioner written confirmation that all Marketing Personnel have received a copy of this Agreement, as required by paragraph 10, within 21 days after the registration of this Agreement.
12. For the purposes of monitoring compliance with this Agreement, the Respondents shall provide to the Commissioner information relating to any matters referred to in Parts II, IV and V of this Agreement that the Commissioner requests, within 30 days following receipt of a written request from the Commissioner.
13. No later than 120 days after the Execution Date, a member of Senior Management of the Respondents shall provide to the Commissioner a statement under oath or solemn affirmation that the compliance program required by Part IV of this Agreement has been implemented.

#### **VI. GENERAL**

14. Notices, reports and other communications required or permitted pursuant to any of the terms of this Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail, facsimile transmission or by email to the Parties at the following addresses:

**(a) Commissioner of Competition**

Competition Bureau  
Place du Portage, 21st Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9  
Attention: Deputy Commissioner of Competition, Cartels and Deceptive  
Marketing Practices Branch

Facsimile: (819) 953-4792

Email: Josephine.Palumbo@canada.ca

**With a copy to:**

Executive Director and Senior General Counsel  
Competition Bureau Legal Services  
Department of Justice  
Place du Portage, 22nd Floor  
50 Victoria Street, Phase I  
Gatineau, Quebec K1A 0C9

Facsimile: (819) 953-9267

**(b) The Respondents:**

Stephanie Burns  
Vice President & General Counsel  
StubHub Inc.  
199 Fremont St.,  
San Francisco, California, United States 94105

Email: steburns@stubhub.com

**With a copy to:**

Joshua Krane  
Blake, Cassels & Graydon LLP  
199 Bay Street, Suite 4000  
Toronto, Ontario M5L 1A9

Email: joshua.krane@blakes.com

15. This Agreement shall be binding upon the Respondents for a period of 10 years following its registration.
16. The Parties consent to the immediate registration of this Agreement with the Tribunal pursuant to section 74.12 of the Act.
17. The Commissioner may, in his sole discretion and after informing the Respondents in writing, extend any of the time frames in Parts IV and V of this Agreement.
18. The Commissioner may, with the consent of the Respondents, extend any of the time frames in Part VI of this Agreement.
19. Nothing in this Agreement precludes the Respondents or the Commissioner from bringing an application under section 74.13 of the Act. Subject to this paragraph, the Respondents will not, for the purposes of this Agreement, including execution, registration, enforcement, variation or rescission, contest the Commissioner's conclusions.
20. The Respondents shall not make any public statements that contradict the terms of this Agreement.
21. The Respondents attorn to the jurisdiction of the Tribunal for the purposes of this Agreement and any proceeding initiated by the Commissioner relating to this Agreement for variation or rescission.
22. In the event of a dispute regarding the interpretation, implementation or application of this Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. In no event shall any dispute suspend any time period under the Agreement. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to this Agreement.
23. This Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and French versions of this Agreement, the English version shall prevail.
24. The Agreement constitutes the entire and only agreement between the Parties and supersedes all previous negotiations, communications and other agreements, whether written or oral, unless they are incorporated by reference herein. There are no terms, covenants, representations, statements or conditions binding on the Parties other than those contained herein.
25. The computation of time periods contemplated by this Agreement shall be in accordance with the *Interpretation Act*. For the purpose of this Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday. For the purposes of determining time periods, the date of this Agreement is the last date on which it is executed by a Party.



26. The Agreement shall be governed by and interpreted in accordance with the laws of Ontario and the laws of Canada applicable therein, without applying any otherwise applicable conflict of law rules.

The undersigned hereby agree to the filing of the Agreement with the Tribunal for registration.

DATED at \_\_\_\_\_, this \_\_\_\_\_ day of February, 2020.

for: StubHub Inc. and StubHub Canada Ltd.

\_\_\_\_\_  
Sukhinder Singh Cassidy  
President

\_\_\_\_\_  
Jeff Poirier  
GM - Music & Theater, North America

We have authority to bind the corporations.

DATED at Gatineau, in the Province of Quebec this \_\_\_\_\_ day of February, 2020.

\_\_\_\_\_  
Matthew Boswell  
Commissioner of Competition

**“APPENDIX A”**

**ACKNOWLEDGEMENT BY SENIOR MANAGEMENT**

[Corporate Company Letterhead]

[date], 2020

**CONFIDENTIAL**

Commissioner of Competition  
Competition Bureau  
Place du Portage, Phase 1  
50 Victoria Street, 21st Floor  
Gatineau (QC) K1A 0C9

**RE: Commitment to Establishment and Maintenance of Compliance Program**

Further to paragraph 9 of this Agreement between the Commissioner of Competition (the “Commissioner”) and StubHub, Inc. and StubHub Canada Ltd., dated \_\_\_\_\_, 2020, I hereby commit to the successful implementation of the corporate compliance program described in Part IV of this Agreement for the purpose of promoting compliance with the *Competition Act*, R.S.C. 1985, c. C-34, as amended (the “Act”), including the deceptive marketing practices provisions in Part VII.1 of the Act. I will take an active and visible role in the establishment and maintenance of the corporate compliance program.

Sincerely,

(Name and title)

\_\_\_\_\_

cc: Executive Director and Senior General Counsel, Competition Bureau Legal Services

Deputy Commissioner of Competition, Deceptive Marketing Practices Directorate, Cartels and Deceptive Marketing Practices Branch